We know that common law imposes strict limitations on the capacity of persons under 21 years of age to hold or divest themselves of property or to enter into contracts concerning matters other than necessities, as was pointed out in the Johnston *v.* Wellesley Hospital *et al* case.[3] In this case it was the opinion of the court that anyone who is obviously intelligent and capable of understanding the possible consequences of a medical procedure is capable of giving consent.

Lord Nathan[4] suggested that an infant who is capable of appreciating fully the nature and consequences of an operation can give effective consent, but that where the infant is without that capacity any apparent consent by him will be a nullity, the sole right to consent being vested in the guardian for the best interest of the child.

Since the question of age of consent has very little precedent in common law and even less in statutory law, we must, as practising physicians, have an official statement by The Canadian Medical Association with regard to its position. As physicians we now stand alone. If operating on a 16-year-old patient is potentially actionable, then we must know. We need answers and we need them now!

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References

1. *The Public Hospitals Act,* RSO, 1970, chap 378 (chap 90 as amended in 1972)
2. *The Venereal Diseases Prevention Act,* RSO, 1970, chap 479 (chap 33 as amended in 1971)
3. *Johnson v Wellesley Hospital et al,* 17 DLR 3d 139, 1971
4. Nathan: *Medical Negligence.* London, Butterworths, 1957, p 176

To the editor: In June 1972, the CMA Council on Community Health presented the following motion to General Council:

WHEREAS THE AGE OF CONSENT AND THE AGE OF MAJORITY ARE THE SAME IN LAW IN THE PROVINCES AND TERRITORIES, AND WHEREAS CURRENT SOCIAL PROBLEMS AND CHANGING LIFE STYLES PRESENT NON-EMERGENCY SITUATIONS WHERE TREATMENT, WITHOUT PERMISSION OF PARENT OR GUARDIAN, IS INDICATED FOR A MINOR, AND WHEREAS CONCERN OVER THIS PROBLEM HAS BEEN EXPRESSED BY BOTH THE C.M.A. AND THE C.M.P.A. DURING THE PAST YEAR, THE C.M.A. RECOMMENDS THAT THE AGE OF CONSENT FOR ANY MEDICAL, SURGICAL AND DENTAL TREATMENT BE 16 YEARS OF AGE IN ALL PROVINCES AND TERRITORIES, AND THAT EACH PROVINCIAL DIVISION BE ASKED TO MAKE REPRESENTATION TO THE APPROPRIATE PROVINCIAL AUTHORITY SO THAT, AS PLANNED, THE SUBJECT CAN BE FULLY DISCUSSED AT THE CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA IN AUGUST 1972.

The subject was discussed at great length at the 1973 Conference of Commissioners on the Uniformity of Legislation in Canada and a resolution "to formulate and recommend for adoption a comprehensive statute dealing with the whole question of minors' consent to medical and dental treatment" was approved. It was proposed that the Ontario and Quebec commissioners would prepare a draft act for submission at the 1974 conference. Word is awaited on what the conference decided.

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Marfan's syndrome and Sherlock Holmes

To the editor: During the year-end holiday season I had occasion to reread "A Study in Scarlet" [1] (the first adventure of Sherlock Holmes). The "villain" of the piece, Jefferson Hope, pursued two men across three continents for several years until he caught up with them and murdered them. Jefferson Hope was over 6 feet in height; he had a ruddy complexion; he was susceptible to epistaxis and ultimately he died of a thoracic aortic aneurysm.

The description of Hope reminded me of the cases of Marfan's syndrome and homocystinuria summarized by McKusick.[2] According to McKusick, malar flush occurs frequently and personality peculiarities are not uncommon in homocystinuria. Hypertension and tall stature are recorded in both conditions. Patients with Marfan's syndrome often die from rupture of thoracic aneurysms.

This villiain–hero then can be moved into the company of other famous persons such as Abe Lincoln who, through the "retrospectoscope", have been diagnosed as probable cases of Marfan's syndrome or homocystinuria.

I would recommend the writings of Conan Doyle to all medical students and everyone in the medical profession. There is no doubt that these stories were written by a person well versed in the British medical tradition of careful clinical observation.

Marfan's syndrome was described as a specific entity in 1896 when Sir Arthur Conan Doyle was 37 years old. I doubt that he was aware of it as a specific syndrome but it is possible that a patient of his acquaintance was the basis for the description. The story was copywritten before 1896 and we may in fact conclude that Doyle described Marfan's syndrome before Marfan! (See also *Can Med Assoc J* 107: 531, 1972.)

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1. Doyle AC: *The Complete Sherlock Holmes. Vol 1. A Study in Scarlet.* New York, Doubleday, 1956
2. McKusick VA: *Heritable Disorders of Connective Tissue,* third ed. St Louis, Mosby, 1972

Contingency billing

To the editor: Recently I was informed by the attorney general of British Columbia that, since an amendment to the Legal Professions Act of 1969, lawyers are permitted to enter into contract with their clients in order to receive a proportion of the damages awarded as their fee. In the event of the suit failing, the client is not responsible to pay his lawyer anything. This American-style "contingency billing" has been introduced quietly in British Columbia and few people know of its existence.

It is common knowledge that, since the early 1960s, when "contingency billing" became legal in the United States, one out of every five doctors in California is sued annually. It is also common knowledge that malpractice awards are increasing in number and in the amounts awarded ($4 million in one recent case). It is also common knowledge that malpractice insurance premiums in the US are increasing astronomically and that now it is beginning to be difficult to find an insurance company willing to issue a malpractice policy.

In a recent conversation with a well known Vancouver lawyer, who often acts for the Canadian Medical Protective Association, I was informed that the legal profession hopes to legalize contingency billing across Canada by 1980.

This is no time for complacency. Only with reasoned argument by individual members and organized medical groups can contingency billing by lawyers be averted. Here in British Columbia an effective lobby must be formed to reverse the existing law with regard to contingency billing. Excellent arguments can be brought to bear, including the fact that publicly run institutions such as schools and hospitals will be just as liable to suffer from this form of billing as individual doctors.

The main concern at the moment is that everyone is informed of the threat to the profession that contingency billing poses. Following this we should look to the CMA to provide leadership in an attack on this iniquitous practice.

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